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09/003,003	01/05/1998	MICHAEL J. II DIETZ	017096-00021	8468

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EXAMINER

WHITE, CARMEN D

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/003,003

Applicant(s)

DIETZ, MICHAEL J. II

Examiner

Carmen D. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31, 33 and 35 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-30, 32, 34 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Dabrowski*** et al in view of ***Manship*** et al.

Regarding claim 1, Dabrowski discloses a video poker electronic gaming system that includes having a plurality of symbols arrayed in multiple columns; selecting initial card symbols to be arrayed; displaying the initial card symbols selected in an array on the monitor; allowing the player to designate chosen symbols, *from none to all*, for replacement; selecting replacement card symbols; replacing the initial card symbols on the monitor with replacement symbols; and determining whether the replacement symbols and any remaining initial symbols constitute a winning combination and rewarding a winning combination (Fig. 1; col. 5, lines 18-28). Dabrowski lacks disclosing the card symbols being arrayed in multiple rows. However, in an analogous video gaming machine, Manship discloses the arraying of symbols in multiple rows and columns and in separate boxes (Fig. 1). It would have been obvious to a person of ordinary skill in the art to arrange to incorporate the feature of multiple columns and rows, as taught by Manship in the video gaming machine of Dabrowski in order to provide a more extensive array of card symbols for multiple card hands to make the game more challenging and thereby increase the player's participation.

Regarding claims 2-9 and 11-13 and 15-17, Dabrowski in view of Manship discloses all the limitations of the claims as discussed above. Dabrowski further discloses a draw poker gaming system that includes allowing the player to replace card symbols to be replaced by other random card symbols from a stored plurality of card symbols (deck of card symbols). The player has the option to draw and discard card symbols until the player is satisfied with the final group of card symbols (final hand). These are common features of a draw poker gaming system.

Regarding claim 10, Dabrowski in view of Manship discloses all the limitations of the claims as discussed above. Manship further teaches the evaluation of symbols across one or more columns to determine winning combination of symbols (col. 5, lines 13-28 and Fig. 2).

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dabrowski** et al in view of **Manship** et al or **Bennett** (6,056,642).

Regarding claims 18 and 19, Dabrowski in view of Manship or Bennett discloses all the limitations of the claims as discussed above. Dabrowski lacks disclosing the feature of allowing the player to select background colors and replace background colors of symbols. However, Manship or Bennet teaches that slot machine play can be enhanced by changing background colors of symbols. Manship discloses the changing of background colors of the symbols in order to increase the video slot machine's appeal to the player. Bennett also discloses the changing of the background of symbols to increase the payout value of the combination of winning symbols (abstract). It would have been obvious to a person of ordinary skill in the art to incorporate the changing of

symbol background color as taught by Manship or Bennett in the system of Dabrowski in order to enhance the symbol replacement system of Dabrowski to further allow the player to increase winning combination outcomes.

Claims 20-30, 32, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dabrowski** et al or **Heidel** et al (5,342,047) in view of **Manship** et al.

Regarding claims 20-23, 25, 29-30, 32, 34 and 36, Dabrowski or Heidel discloses an electronic gaming apparatus that includes a monitor for displaying a plurality of symbols arrayed in multiple columns; a memory that stores a list of possible symbols (deck of card symbols); a microprocessor to select symbols from the memory for display on the monitor to determine whether a final group of displayed symbols creates a winning or losing game; a first button to initiate game play and a second button to allow the player to choose replacement symbols from none to all of the initial card symbols and have the microprocessor randomly select replacement card symbols from a list of possible card symbols stored in memory and display the replacement card symbols together with any remaining initial card symbols to create a final group of symbols (hand of cards) [Dabrowski- Fig. 1, #62; #60; col. 5, lines 17-28; Heidel- Fig. 1; col. 2, lines 51-66)]. Heidel further discloses an embodiment where the video gaming machine can be used to display symbols in multiple rows and columns (Fig. 2a). Dabrowski lacks disclosing the card symbols arranged in multiple rows. Manship discloses this feature (see above claim rejection for explanation and motivation).

Regarding claims 24 and 26, Dabrowski or Heidel in view of Manship discloses all the limitations of the claims as discussed above. Manship further discloses the

symbols having the appearance of reels of a slot machine (Fig. 2). Heidel also discloses the display of symbols with the appearance of reels on a slot machine (Fig. 2a).

Regarding claims 27-28, Dabrowski or Heidel in view of Manship discloses all the limitations of the claims as discussed above. Heidel further discloses the use of touch screen controls (abstract; Fig. 1).

Allowable Subject Matter

Claims 31, 33 and 35 are allowed (see below for explanation).

Examiner's Response to Applicant's Remarks

Applicant's inclusion of the claim language "from one to all", as suggested by the examiner, in independent claims 31, 33 and 35 has overcome the claim rejections over the cited prior art. The incorporation of this claim language makes it clear that the feature of the replacement of a symbol in one of the separate boxes of the multiple symbol columns and rows has to be done at least once. This claim language better distinguishes the "re-spin" feature that Applicant argues for patentability.

Regarding Applicant's arguments regarding the remaining claims 1-13, 15-30, 34 and 36, Applicant argues the Manship et al and Dabrowski et al references separately. However, the references are combined in a 35 USC 103(a) rejection. Applicant argues that the combination of the Manship and Dabrowski references is not a rightful combination because one is drawn to a slot machine and the other to a video poker game. However, the examiner takes official notice that both systems are extremely well known types of video gaming machines that accept a wager and present symbol

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combinations that either produce wins or losses for the player. Therefore, the examiner views it as a natural progression to incorporate features from both video gaming machine technologies in order to increase the player's chances of obtaining a winning combination and to provide a game where the player has more control over symbol combination. Further, the "none to all" feature included in the remaining claims that are not allowed, suggests that there could be situations where none of the symbols are replaced by the player, which is typical of slot machines with multiple columns and rows of symbols.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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USPTO Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carmen D. White whose telephone number is 703-308-5275. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7768 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.


C. White
Patent Examiner


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